

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY NINETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 12413 of 2000

Between:

1. The Superintending Engineer,

Irrigation Circle Department,

Hyderabad.

2. The Executive Engineer,

Irrigation Branch,

Nalgonda.

3. The Assistant Engineer,

Musi Canal, Suryapet Sub-Division,

Nalgonda.

..... PETITIONERS

AND

1. B.Sathaiah,

C/o Sri M.Dasaradha Reddy,

Advocate, H.No.11-4-649/2/11 & 14,

III Floor, Sree Vilas Apartments,

A.C.Guards, Hyderabad.

2. The Presiding Officer,

Labour Court-III,

Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or a writ particularly one in the nature of writ of Certiorari calling for the records relating to the Award dated 26-2-2000 in I.D.No.122/95 on the file of the Labour Court-III, Hyderabad and to quash the same.

Counsel for the Petitioners: GP FOR IRRIGATION & COMM AREA DEV.

Counsel for the Respondent No.1 Mr. B.SAIRAM

COUNSEL FOR THE RESPONDENT NO.2 : GP FOR LABOUR

The Court made the following ORDER:

Heard the learned counsel appearing for the respective parties.

Aggrieved by the award dated 26-2-2000 made in I.D.No.122 of 1995 on the file of the Labour Court III, Hyderabad, the Irrigation Officials filed this Writ Petition to quash the same.

The 1st respondent herein raised a dispute against the action of the petitioners in not accepting his joining report, pursuant to his reappointment on 25-5-1976 as Telephone Operator and the said dispute was referred and considered by the Labour Court by the aforesaid award dated 26-2-2000, which was allowed partly, holding that the 1st respondent is entitled to reappointment as a Mazdoor or equivalent post in the Irrigation department without any back wages or consequential benefits. But, however, his services will be calculated from the date of filing I.D.No.122 of 1995, i.e., 13-7-1995 onwards.

The brief facts of the case are that the 1st respondent was appointed as Mazdoor in the Irrigation department on 19-11-1993 and he worked as such, till his services were terminated on 31-3-1967. It is the contention of the 1st respondent that the action of the petitioners in retrenching him even after 3½ years of continuous service is illegal and unsustainable. Therefore, he has made a representation for the reinstatement. Accordingly, the Executive Engineer, Irrigation Department, Nalgonda considered his application for the appointment of Telephone Operator vide his orders dated 3-8-1976 in WC.A10/6478-80. Pursuant to the said order, he has submitted the joining report on 19-8-1976, but the same was not accepted as he was only a Man-mazdoor, but not Telephone Operator. Therefore, the 1st respondent has been continuously making representations to permit him to join duty

pursuant to the reappointment order and finally, he has approached in September, 1981 to permit him to join duty, but the same was not considered on the ground that the 1st respondent could not be permitted to work in the re-appointed post in lieu of the orders issued by the Government in G.O.Ms. No.130, dated 18-3-1981.

Aggrieved by the action of the 3rd petitioner herein, in not accepting his joining report and in not taking any action on the representation filed by him, he has filed O.A.No.5603 of 1992 before the A.P. Administrative Tribunal. Since the 1st respondent has got an effective alternate remedy by way of approaching the Labour Court, the 1st respondent has withdrew the said O.A. and approached the 2nd respondent by raising a dispute in I.D.No.122 of 1995 before the Labour Court III, Hyderabad. The withdrawal of the said O.A. is not in dispute.

Before the Labour Court, the 1st respondent herein was examined as W.W.1 in support of his claim and two other workmen were examined as W.Ws. 2 and 3. He has also filed documentary evidence Exs.W1 to W6, i.e., Rejection order dated 26-8-1976 rejecting to accept the joining report of the 1st respondent, Letter dated 18-7-1989 issued by the Executive Engineer, I.B.Division, Nalgonda, Letter dated 4-12-1991 issued by the Superintending Engineer, Memo No.2530/Work-charged/B7/9725, dated 13-1-1992, Representation of the 1st respondent dated 13-4-1995, G.R.No.5603/92 on the file of the A.P. Administrative Tribunal, Hyderabad. On behalf of the petitioners, M.Ws.1 and 2 were examined and Exs.M.1 to M.5 were marked.

The Labour Court considered the following points for consideration:

1. Whether the petitioner is entitled for reappointment as Telephone Operator or any suitable post ?
2. Whether the rejection of the 3rd respondent is liable to be set aside ?
3. To what relief the petitioner is entitled ?

On the point No.1, the Labour Court held that after 3½ years service, the 1st respondent was retrenched from his service and the petitioners have absorbed the juniors of the 1st respondent into the department, but the representation of the 1st respondent for his reinstatement into service was not considered and therefore, the 1st respondent, aggrieved by the action of the petitioners, approached the A.P.

Administrative Tribunal in O.A.No.5603 of 1992, which was dismissed as withdrawn, with a liberty to approach the appropriate authorities and the 1st respondent being the retrenched worker in the Irrigation department, he may be reinstated into service in the same post or in any suitable post. Accordingly, it was held that the 1st respondent is entitled for reinstatement into service without any back wages and other consequential benefits, except continuity of service from the date of filing of the said I.D.

Insofar as the 2nd point is concerned, the Labour Court held that having given the appointment orders, the joining report was not accepted only on the ground that there is a ban for any reappointment as per the orders of the Government in G.O.Ms.No.130 dated 18-3-1981. It is stated that the rejection order of the 3rd petitioner in refusing to accept the joining report only on the ground that the 1st respondent was doing the Government civil contract works and therefore, the action of the 3rd petitioner in rejecting to accept the joining report of the 1st respondent is illegal and improper. Accordingly, the action of the 3rd petitioner in rejecting to accept the joining report of the 1st respondent is held to be unsustainable under law. Accordingly, I.D.No.122 of 1995 was partly allowed, directing the petitioners herein to reappoint the 1st respondent as Man-mazdoor or in any equivalent post in the Irrigation department, but the 1st respondent is not entitled for any back wages or consequential benefits except calculating the services from the date of filing of I.D.No.122 of 1995, i.e. from 13-7-1995.

I have perused the material on record and the pleadings.

The learned Government Pleader appearing for the petitioners contended that the action of the Presiding Officer of the Labour Court in entertaining the I.D. after a long lapse of rejection order, rejecting to accept the joining report of the 1st respondent, in the year, 1976 is illegal and unsustainable. Therefore, the action of the Labour Court in entertaining the dispute is barred by time. The petitioners have taken the said ground for the first time in the Writ Petition and a perusal of the Counter filed by the petitioners before the Labour Court shows that there is no defence taken in that regard. On the other hand, in their counter, the petitioners have accepted before the Labour Court that the 1st respondent was appointed as a Man-mazdoor on 19-11-1963 and he was retrenched from service after his continuous

service of 3½ years, i.e., on 31-1-1967 and pursuant to his representation, re-appointment orders were issued by proceedings dated 25-5-1976 and again vide orders dated 3-8-1976, but, the joining report of the 1st respondent was not accepted by the 3rd petitioner. The only ground that was taken that for the first time 1st respondent herein approached the petitioners in September, 1981 and therefore, the petitioners refused to accept his joining report on the ground that no reappointment order can be given as per the orders of the Government in G.O.Ms.No.130, dated 18-3-1981.

Therefore, I am of the view that the said plea of the latches on the part of the 1st respondent was not at all taken before the Labour Court and therefore, there was no issue at all as regards the belated dispute. However, I am of the opinion that the 1st respondent has been approaching time and again and he has also filed O.A.No.5603 of 1992 before the A.P. Administrative Tribunal and withdrew the same with a liberty and thereafter approached the 2nd respondent. The 2nd Respondent rightly entertained the I.D. and passed the said award. However, as the 1st respondent did not work, the 2nd respondent rightly denied the payment of back wages and all other consequential benefits. I do not see any incurable defect in the award passed by the Labour Court. I also do not see any illegality or irregularity in the said award and I am of the opinion that the said award is a just and valid one. Writ Petition is devoid of merits.

Accordingly, the Writ Petition is dismissed. No order as to costs.

(V.ESWARAIAH,J)

29th September, 2004.

Tsy/shr

To

1. The Presiding Officer,

Labour Court-III,

Hyderabad.

2. Two CCs to the GP for Labour, High Court Buildings,

Hyderabad (O.U.T.)

3. Two CD Copies.